

Request for Proposals

Evaluation, Measurement and Verification Of MEA Funded Programs for the Maryland Energy Administration

PROJECT NO. **DEXR0400037**



**MARYLAND ENERGY
ADMINISTRATION**

Issue Date: November 10, 2009

NOTICE

Prospective Offerors who have received this document from the Maryland Energy Administration's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

Minority Business Enterprises are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State proposals solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this Contract, please fax this completed form to: 410-974-2250 to the attention of the Procurement Officer.

Title: Evaluation, Measurement and Verification of MEA-Funded Programs for the Maryland Energy Administration

Project No:

1. If you have responded with a "no bid", please indicate the reason(s) below:

- ☐ Other commitments preclude our participation at this time.
- ☐ The subject of the solicitation is not something we ordinarily provide.
- ☐ We are inexperienced in the work/commodities required.
- ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- ☐ The scope of work is beyond our present capacity.
- ☐ Doing business with Maryland Government is simply too complicated. (Explain in REMARKS section.)
- ☐ We cannot be competitive. (Explain in REMARKS section.)
- ☐ Time allotted for completion of the bid/proposals is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Bid/Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE requirements. (Explain in REMARKS section.)
- ☐ Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- ☐ Payment schedule too slow.
- ☐ Other: _____

2. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

Offeror Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

KEY INFORMATION SUMMARY SHEET

STATE OF MARYLAND

Request for Proposals

Evaluation, Measurement & Verification of MEA Funded Programs for the Maryland Energy Administration

PROJECT NUMBER DEXR0400037

RFP Issue Date: November 10, 2009

RFP Issuing Office: Maryland Energy Administration

Procurement Officer: Maria Ulrich
Office Phone: (410) 260-7752
Fax: (410) 974-2250
e-mail: mulrich@energy.state.md.us

Proposals are to be sent to: Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
Attention: Maria Ulrich

Pre-Proposal Conference: December 2, 2009 2:00pm
MD Department of Budget & Management
45 Calvert Street Room #164
Annapolis, Maryland 21401

Closing Date and Time: Friday, January 8, 2010 @ 12:00 pm

NOTE

Prospective Offerors who have received this document from the Maryland Energy Administration's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

1.1.1 The Maryland Energy Administration is seeking a contractor to plan, design, and perform evaluation, measurement and verification of the outputs, outcomes, and energy savings impacts of MEA's Portfolio of American Recovery and Reinvestment Act and Strategic Energy Investment Fund Programs.

MEA's EM&V objectives include:

- Consider and analyze MEA's various energy programs, including expanding energy efficiency efforts, promoting clean renewable energy development, financing clean energy innovation and providing consumer information;
- Determine the appropriate program measurements and design EM&V plans to ensure achievement of MEA program goals;
- Provide tracking mechanisms and documentation to report energy savings, both gross and net from MEA program efforts;
- Provide verification of program savings as reported by Technical Services Managers – through due-diligence audits, project documentation inspections, and project site inspections;
- Recommend improvements to the design and implementation of existing and future energy programs through process evaluations; and
- Evaluate and recommend improvements to the design and implementation of existing and future loan and training programs through process evaluations.

1.1.2 It is the State's intention to obtain services, as specified in this Request for Proposals, from a Contract between the successful Offeror and the State.

1.1.3 MEA intends to award one Contract to the Offeror whose proposal is deemed to be the most advantageous to the State.

1.1.4 Offerors must be able to provide all services and meet all of the requirements requested in this solicitation.

1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

- a. **Administration** – Maryland Energy Administration (MEA)
- b. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us
- c. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of Attachment A.
- c. **Contract Manager (CM)** – The State representative for this project that is primarily responsible for Contract administration functions, including issuing written direction, compliance with terms and conditions, monitoring this project to ensure compliance with the terms and conditions of the Contract and in achieving on budget/on time/on target (e.g., within scope) completion of the project.
- e. **Contractor** – The selected Offeror that is awarded a Contract by the State.

- f. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.
- g. **MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- h. **MEA** – Maryland Energy Administration.
- i. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 6:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov - keyword State Holidays.
- j. **Offeror** – An entity that submits a proposal in response to this RFP.
- k. **Proceedings** - means, but is not limited to, prehearing conferences, case hearings, oral arguments, informal conferences, and legislative hearings.
- l. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract, issuing notices to proceed, determining scope issues, and is the only State representative that can authorize changes to the Contract. MEA may change the Procurement Officer at any time by written notice to the Contractor.
- m. **Project Manager** – The person designated as the single point-of-contact in the Offeror’s proposal with the authority and knowledge to resolve contract matters on behalf of the Contractor that are not technical in nature.
- n. **PSC** – Maryland Public Service Commission
- o. **Request for Proposals (RFP)** – This Request for Proposals for Evaluation, Measurement and Verification of MEA -Funded Programs for the Maryland Energy Administration, Project Number **DEXR0400037** dated November 10, 2009 including any amendments.
- p. **State** – “State” means the State of Maryland.

1.3 Contract Type

The Contract that results from this RFP shall be a Fixed Hourly Labor Rate Unit Price in accordance with COMAR 21.06.03.

1.4 Contract Duration

The Contract resulting from this RFP shall commence upon the issuance of the Notice-To-Proceed and end June 30, 2013.

1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Maria Ulrich
Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
Phone Number: 410-260-7752
Fax Number: 410-974-2250
E-mail: mulrich@energy.state.md.us

MEA may change the Procurement Officer at any time by written notice.

1.6 Contract Manager

The Contract Manager is:

Robert J. Howatt
Director of Planning
Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
Phone Number: 410-260-7206
Fax Number: 410-974-2250
Email: bhowatt@energy.state.md.us

1.7 Pre-Proposal Conference

A pre-proposal conference (Conference) will be held on December 2, 2009, beginning at 2:00 PM, at 1623 Forest Drive, Suite 300, Annapolis, Maryland 21403. Attendance at the pre-proposal conference is not mandatory, but all interested Offerors are encouraged to attend in order to facilitate better preparation of their proposals. All questions to be addressed at the pre-proposal conference must be submitted to the Procurement Officer by 12:00pm on Monday, November 30, 2009.

The Pre-Proposal Conference will be summarized. As promptly as is feasible subsequent to the Pre-Proposal Conference, a summary of the Pre-Proposal Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations at the Pre-Proposal Conference, please e-mail, mail or fax (to Maria Ulrich – see information in 1.4) the Pre-Proposal Conference Response Form to the attention of the Procurement Officer with such notice no later than 2:00 PM on November 30, 2009. The Pre-Proposal Conference Response Form is included as Attachment E to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call no later than November 30, 2009. MEA will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the MEA web site (www.energy.maryland.gov) and other means for transmitting the RFP and associated materials, the solicitation and summary of the pre-proposal conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via e-Maryland Marketplace.

In order to receive a contract award, a vendor must be registered on eMaryland Marketplace (eMM). Registration is free. Go here to register: <https://ebidmarketplace.com/>. Click on "Registration" to begin the process and follow the prompts.

1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the pre-proposal conference. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions

may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Officer. Questions, both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference. All questions to be addressed at the pre-proposal conference must be submitted to the Procurement Officer by 12:00pm on Monday, November 30, 2009.

Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted two business days prior to the proposal due date to the Procurement Officer. Time permitting answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the RFP.

1.10 Proposals Due (Closing) Date

An unbound original and three (3) bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.5, no later than 12:00 PM (local time) on January 8, 2010 in order to be considered. An electronic version (diskette or CD) of the Technical Proposal in MS Word format must be enclosed with the original technical proposal. An electronic version (diskette or CD) of the Financial Proposal in MS Word format must be enclosed with the original financial proposal. Ensure that the diskettes are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial).

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02, proposals received by the Procurement Officer after the due date, January 8, 2010, at 12:00 PM (local time) will not be considered.

Proposals may not be submitted by e-mail or facsimile.

1.11 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date of proposals or of Best and Final Offers (BAFOs), if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.12 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the MEA Procurements web page and through eMarylandMarketplace. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

1.13 Cancellations; Discussions

The State reserves the right to cancel this RFP, accept or reject any and all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct

discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

1.14 Oral Presentation

Offerors will be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation shall be submitted in writing. All such representations will become part of the Offeror's proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations. Typically oral presentations occur approximately two weeks after the proposal due date.

1.15 Incurred Expenses

The State will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this solicitation.

1.16 Economy of Preparation

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposals to meet the requirements of this RFP.

1.17 Protests/Disputes

Any protest or dispute related respectively to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

1.18 Multiple or Alternate Proposals

Neither multiple nor alternate proposals will be accepted.

1.19 Access to Public Information Act Notice

An Offeror shall give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information can be disclosed. Information which is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Technical proposal and if applicable in the Financial proposal.

1.20 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the proposals must be included in the Offeror's proposals. Additional information regarding MBE subcontractors is provided under paragraph 1.24 below. If an Offeror that seeks to perform or provide the services required by this RFP is subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization

will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.21 Mandatory Contractual Terms

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the Contract, attached as Attachment A. Any exceptions to this RFP or the Contract must be clearly identified in the Executive Summary of the technical proposal. A proposal that takes exception to these terms may be rejected.

1.22 Proposal Affidavit

A proposal submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this RFP.

1.23 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this RFP. This Affidavit must be provided within five business days of notification of proposed Contract award.

1.24 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of 10 % has been established for the services resulting from this contract. Attachment D – Minority Business Enterprise Participation, Instructions and Forms are provided to assist Offerors.

Each Offeror shall complete, sign and submit Attachment D-1 (Minority Business Enterprise Participation), and D-2 (Minority Business Enterprise Schedule) at the time it submits its technical response to the RFP. Failure of an Offeror to complete and sign Attachment D-1 (Minority Business Enterprise Participation) and D-2 (Minority Business Enterprise Schedule) at the time it submits its technical response to the RFP, will result in the State's rejection of the Offeror's Proposal to the RFP.

The Contractor once awarded a contract will be responsible for submitting the following forms to provide the State with ongoing monitoring of MBE Participation:

- D-3 (Outreach Efforts compliance Statement)
- D-4 (Subcontractor Project Participation Statement)
- D-5 (MBE Participation Prime Contract Paid/Unpaid MBE Invoice Report)
- D-6 (MBE Subcontractor/Contractor Unpaid MBE Invoice Report)

A current directory of certified Minority Business Enterprises is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive Maryland 21076. The phone number is 410-865-1269.

The directory is also available at <http://www.e-mdot.com>. The most current and up-to-date information on Minority Business Enterprises is available via this website.

1.25 Arrearages

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

1.26 Procurement Method

This Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

1.27 Verification of Registration and Tax Payment

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

1.28 False Statements

Offerors are advised that section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - Falsify, conceal, or suppress a material fact by any scheme or device;
 - Make a false or fraudulent statement or representation of a material fact; or
 - Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

1.29 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAC X-10 form can be downloaded at: http://compnet.comp.state.md.us/General_Accounting_Division/Vendors/Electronic_Funds_Transfer/default.shtml .

1.30 Non-Visual Access

Not Applicable to this Procurement

1.31 Mercury and Products That Contain Mercury

Not Applicable to the Procurement

1.32 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in the following section entitled ***Living Wage Requirements for Service Contracts*** (Attachment J). If the Offeror fails to complete and submit the required Living Wage documentation, the State may determine an Offeror to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$11.72 per hour, if State contract services valued at 50% or more of the total value of the contract is performed in the Tier 1 Area. If State contract services valued at 50% or more of the total value is performed in the Tier 2 Area, a bidder shall pay each covered employee at least \$8.81 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The contract resulting from this solicitation has been deemed to be a Tier 1 Contract.

1.33 Prompt Payment Requirement

This procurement and the contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror who is awarded a contract must comply with the prompt payment requirements outlined in the Contract, §31 (see Attachment A). Additional information is available on the Governor's Office of Minority Affairs (GOMA) website at: http://www.oma.state.md.us/documents/PROMPTPAYMENTFAQs_000.pdf

SECTION 2 – MINIMUM QUALIFICATIONS

NOT APPLICABLE TO THIS RFP

SECTION 3 – SCOPE OF WORK

3.1 Purpose and Background

3.1.1. The State is issuing this solicitation for the purposes outlined in Section 1.1 of this RFP.

3.1.2. Background - MEA Mission

The mission of the Maryland Energy Administration (MEA) is to maximize energy efficiency while promoting economic development, reducing reliance on foreign energy supplies, and improving the environment.

MEA advises the Governor on directions, policies and changes in the various segments of the energy market. As demand/supply competition, technological innovations, and policy changes by the federal government cause major changes in market sensitive energy sectors (e.g., petroleum markets, gas deregulation, and emerging competition in the electric utilities sector), State government must be in position to respond to new opportunities, as well as adjust to any potential dangers.

MEA prepares State government to respond to the changing dynamics of the energy industry. The strategic goals of the Maryland Energy Administration are:

- to make the State of Maryland a leader in energy efficiency;
- to reduce costs to our citizens;
- to leverage public/private partnerships in order to improve the competitive position of Maryland industry; and
- to lower the operating expenses of State and local governments while contributing to the improvement of air and water quality in Maryland.

Energy encompasses a broad range of public policy and governance issues. How efficiently we use energy touches everything we do--not only the environment and waste management, but also power supply, economic competitiveness, and energy security. Energy will continue to be a major part of the State's agenda.

3.1.3 Incorporation by Reference

The following documents are incorporated into this RFP by reference. It is necessary for the offeror to be familiar with these reports and legislation to be able to be an effective resource for the Administration.

3.1.3.1. Maryland Strategic Electricity Plan – January 14, 2008

<http://energy.maryland.gov/documents/MEASTRATEGICELECTRICITYPLAN.pdf>

3.1.3.2. EmPOWER Maryland Energy Efficiency Act of 2008 – HB 374 (2008)

<http://mlis.state.md.us/2008rs/bills/hb/hb0374e.pdf>

3.1.3.3. Maryland Strategic Energy Investment Program – HB 368 (2008)

<http://mlis.state.md.us/2008rs/bills/hb/hb0368e.pdf>

3.1.3.4. Energy Efficiency: The First Fuel for a Clean Energy Future: Resources for Meeting Maryland's Electricity Needs – February 2008

<http://aceee.org/pubs/e082.htm>

3.1.3.5. MEA FY 2010 Program Booklet

<http://energy.maryland.gov/documents/FY2010programbook.docx>

3.1.3.6 PJM Manuals on market operations related to energy efficiency and demand response resources

<http://www.pjm.com/documents/manuals.aspx>

3.1.3.7 Northeast Energy Efficiency Partnerships

<http://www.neep.org>

3.2 Scope of Work

Upon issue of a task order notice-to-proceed by the Contract Manager, the Contractor shall perform the following tasks (Additional tasks not identified herein may also be performed via the task order process):

3.2.1 Task #1 Develop Portfolio/Program EM&V Plan

Develop an EM&V Plan describing the evaluation efforts to be conducted in Program Years 1, 2 and 3 for each of the programs in MEA's Program Portfolio using the FY 2010 Program Booklet, and how the results will be combined for a portfolio evaluation report. The portfolio/program EM&V plans are detailed work plans that identify:

- A list of the evaluation studies that will be undertaken in each year with step-by-step action plans;
- Reporting formats; and
- How the results of each program's EM&V are combined to provide an EM&V of the portfolio as a whole.

The EM&V Plan is expected to be a "living document," and will be revised as needed throughout the project term. The EM&V Contractor shall plan for annual updates to EM&V Plan, and for integrating results from and working in conjunction with the Maryland baseline study managed by the Maryland Public Service Commission and the Northeast Energy Efficiency Partnerships, Inc. (NEEP) EM&V Forum, which will be developing simultaneously. The contractor will be expected to participate in some NEEP discussions and forums as may be appropriate and related to EM&V requirements.

The EM&V plans include schedules, budgets and staffing plans. EM&V plans should be created for each program within MEA's Program Portfolio. The expectation is that the EM&V Plan will include, but not be limited to, the following elements for each program (with a summation for MEA's EE Program Portfolio as a whole):

- Detailed revision of the high-level summary evaluation and analytical approach presented in the EM&V Contractor's proposal. This detailed revision will build on information collected during a project initiation meeting, intervening discussions, and meetings between the MEA project manager, MEA implementation contractors, and the EM&V Contractor;
- Description of the programs to be evaluated and the program logic/theory;
- A description of evaluation objectives, evaluation questions and evaluation rigor level for each program;
- Descriptions of metrics (including energy and demand savings metrics) for each program and the portfolio as a whole;
- Identification of the need for deemed savings measures and how their values will be developed;
- Description of how realization rates and net-to-gross ratios will be determined and revised;
- Description of how program impact results will be combined to report portfolio impacts, addressing the need for adjustments such as accounting for program overlap or other factors;

- Description of how EM&V procedures will comply with MD PSC and PJM EM&V requirements;
- Description of corresponding EmPOWER Maryland Utilities Conservation Program elements and EM&V procedures (if available);
- Identification of best-practice approaches appropriate to each program, with the plans informed by standard technical references such as the International Performance Measurement and Verification Protocol and the National Action Plan Model Energy Efficiency Program Impact Evaluation Guide;
- Description of the tradeoffs in allocating limited budget dollars to specific tasks and programs, and why those tradeoffs were selected;
- Description of the methodologies, procedures and data tracking systems to be used by the EM&V Contractor to conduct the process and impact evaluations and project verifications for each program including data gathering, sampling and analysis methods;
- Description of other activities to be conducted by the EM&V Contractor in support of evaluation related activities, such as market baseline assessments and determining stipulated (deemed) savings values;
- Description of the data and information needed from the MEA program implementation contractors or agencies with estimated dates that the data will be needed;
- Detailed work plan, including identification of staff resources and the management of subcontractors, project schedule and visual presentation of tasks, sub-tasks, and milestones;
- Description of EM&V Contractor's project and management milestones; and
- Timeline and dates of deliverables from the evaluation effort.

3.2.2 Task #2 Establish EM&V QA/QC and Due Diligence Procedures for Implementers

The EM&V Contractor will develop and implement appropriate quality assurance/quality control (QA/QC), inspection and due diligence procedures for each program. The procedures will include reviewing, and perhaps building on or modifying, QA/QC and EM&V processes that will be developed by MEA program implementation contractors or agencies. The procedures will vary by program and are necessary to assure customer eligibility, completion of installations, and the reasonableness and accuracy of savings upon which incentives are based.

3.2.3 Task #3 Enhance MEA Program Implementation Contractor/Agency Tracking System

The EM&V Contractor will review the existing Sales Force program tracking system to ensure appropriate data interface with upload abilities from contractor Excel tracking documents. The EM&V Contractor will work with the MEA Sales Force Implementation Contractor/Agency representatives and MEA to provide necessary Sales Force program updates and linkage mechanisms for external user data inputs. The EM&V Contractor will implement data transfer enhancements as necessary and assure that the tracking system provides the necessary information and that the data fields are adequately and accurately populated and controlled.

3.2.4 Task #4 Implement the EM&V

This task involves the actual implementation of the evaluation, measurement and verification activities, as approved by MEA. Activities will include, but are not limited to:

- Maintaining a data evaluation and management tracking system;
- Providing initial data inputs to populate the tracking system;
- Reviewing Program Implementation Contractor savings estimates;

- Working with the MEA Implementation Contractor/Agency representatives in developing estimated measure savings parameters with all work documented in an EM&V Technical Reference Manual (TRM), including assumptions, lifetime, free ridership, spillover, incremental and baseline costs, expected useful lives, and other parameters as needed. The EM&V Contractor's role will include creation of the TRM, consistent with NEEP Forum and other agency requirements, reviewing the TRM information and possibly revising certain values as needed;
- Conducting limited market baseline studies to establish baselines as needed for specific program's impact evaluations;
- Propose sampling confidence/precision criteria; criteria shall be defined by EM&V Contractor based on available budget;
- Verifying MEA Implementation Contractor/Agency supplied data;
- Acquiring data from the MEA Implementation Contractor/Agency representatives or other sources;
- Conducting field inspections;
- Installing spot, short-term and long-term metering equipment on participant property in cooperation with various utilities;
- Developing survey instruments;
- Collecting and analyzing data;
- Calculating Gross Program energy and demand savings using field verification, stipulated savings, M&V, and/or large scale billing analyses;
- Calculating Net Energy and Demand Savings;
- Calculating cost-effectiveness of programs;
- Conducting process evaluations using interview techniques and document review procedures;
- Measuring customer satisfaction as part of the process evaluation; and
- Interfacing and coordinating reporting with MEA Program Administrator.

3.2.5 Task #5 Evaluation Management

Under this task, the selected EM&V Contractor will be responsible for:

- Ensuring that all the evaluation work activities are implemented as documented in the EM&V Plan and TRM and that project reporting is completed according to the specifications and schedule documented or referenced in the EM&V plan and TRM;
- Maintaining regular and direct communication with the MEA Project Manager, MEA Implementation Contractor/Agency representatives;
- Participate in MEA meetings as-needed;
- Attending and facilitating meetings - including initiation meeting(s), regular and ad-hoc project meetings, and a final evaluation "close out" meeting;
- Project reporting – which is expected to include, but not necessarily limited to, the following items:
 - a) Monthly – Project status reports highlighting issues with each EM&V activity.
 - b) Quarterly – Review of major findings, observations, review of project implementation and recommended updates to the EM&V Plan.
 - c) Ad-hoc – To document problems, resolution and urgent issues as they arise.
 - d) Annual Verification Report – annual verification reports will serve to verify MEA data from the previous program year(s).

- e) Interim and Final Evaluation Reports – These reports will provide interim and final estimates of the net energy impacts achieved for various snapshots in time as well as any other evaluation findings, observations, and recommendations regarding MEA’s programs.
- f) Final Project Report – The final project report must summarize all the work that has occurred. The report will present an overview of the EM&V efforts and identify key issues that came up during the evaluation with a summary of how they were handled. The report should also recommend how the portfolio’s evaluations should be conducted in the future; identifying changes to the evaluation approach that can be expected to improve the reliability of the findings. EM&V Contractors should also recommend (a) modifications to the evaluation protocols that can improve the reliability of the impact estimates and (b) any follow-up, market transformation, and/or persistence.

3.2.6 Task #6: Program Evaluation Support

The EM&V Contractor will occasionally be called upon to provide general support for MEA program evaluation efforts beyond that which is explicitly described in Tasks 1-5 and the EM&V Plan. This program evaluation support may include but is not limited to the following activities:

- Assisting in development and design of materials needed for workshops, press conferences, reports, and case studies for distribution to general and technical audiences;
- Preparing analyses, findings, and recommendations in response to inquiries from the MEA Project Manager;
- Providing technical experts and possible written comment or testimony for hearings, workshops and other meetings, and preparing technical information for possible inclusion in meetings and reports;

3.2.7 Task # 7 Performance Requirements

- 3.2.7.1 Consistency with other EM&V frameworks - To the extent that MEA establishes a statewide evaluation framework, the EM&V Contractor will be required to review and adhere to the framework. In addition, it is expected that information resulting from the Maryland electric baseline study RFP and the Northeast Energy Efficiency Partnerships, Inc. (“NEEP”)’s Regional Evaluation, Measurement, and Verification Forum will inform the final product. It is the full intention of MEA to leverage the results of the NEEP projects to reduce costs for this RFP. It also expected that EM&V planning and procedures will be consistent with accepted engineering standards and protocols (i.e., the International Performance Measurement and Verification Protocol [IPMVP] guidelines as established by the U.S. Department of Energy); and comply with any MD PSC and PJM EM&V requirements as stated by the PJM Energy Efficiency task force.
- 3.2.7.2 Collaborative environment - The Contractor will communicate, cooperate, and collaborate with MEA and other MEA contractors in order to achieve program goals. The EM&V Contractor will work closely with the Technical Services Manager, the Financial Services Manager, and MEA staff. Other stakeholders in which the EM&V Contractor may coordinate with include MD PSC staff, PJM staff, EmPOWER Maryland Utilities, and the Maryland Office of the People’s Counsel.
- 3.2.7.3 Accessibility - The CONTRACTOR will maintain a telephone line and be accessible to MEA, program partners and participants during business hours throughout the duration of the contract. If not immediately available, the CONTRACTOR will post a message indicating normal staffing hours and that the CONTRACTOR will respond within two business days. Callers should always be given the option to leave a message.

3.2.8 Task Orders for Consulting Services

After commencement of the contract, all invoiced work by the Contractor will be defined and initiated through a task order process. MEA will issue a task order (TO) request to the Contractor's Project Manager outlining the desired work to be accomplished. The TO request will identify a deadline for completion of the work requested. In response to the TO request, the Contractor's Project Manager shall develop a written scope of work, a projection of the necessary work effort (hours and staff), and an itemized project cost estimate. The cost estimate must include all related costs associated with the specified TO. In addition, the response must include the labor category and resumes of any staff or personnel who will work on the project if the resumes have not previously been provided to the MEA. Some tasks may require the purchase of related materials, equipment or supplies. Materials, equipment or supplies above and beyond what is required for normal business operations may be requested through the task order process. The Contractor shall include a detailed cost estimate for any materials, equipment or supplies as a part of the task order. In addition, the response must include the labor category and resumes of any staff or personnel who will work on the project if the resumes have not previously been provided to the MEA.

All non-expendable equipment procured with funds from this Contract, shall be MEA property and shall be used primarily for work under this Contract. Prior written approval of MEA shall be required for use of the equipment, on a non-interference basis, for other work of the Contractor. The Contractor shall use all effort to care for and maintain the equipment. Upon termination of this Contract, MEA shall determine what disposition shall be made of the equipment and shall so notify the Contractor within thirty (30) days. Non-expendable equipment is that which costs at least \$500, either as an individual piece, or a group of pieces intended to be used together.

The Contractor shall receive a written notice to proceed from the Contract Manager prior to commencing work. The Contractor may not proceed with the TO until written notice from the Contract Manager to proceed. Written notice may take the form of a signature of approval on a submitted task order cost estimate or separate written correspondence including, but not limited to, email.

3.2.8.1 Task Order Process

Services shall be provided via a task order process using the pre-approved fully-loaded labor rates applicable to their labor categories as follows:

A. The Contract Manager will e-mail or fax a request to the Contractor to provide services. On occasion, the Contract Manager may contact the Contractor's Project Manager by telephone to orally convey the contents of a task order request. The request shall include at a minimum:

- a) The due date and time for submitting a response to the request;
- b) Technical requirements and description of the services needed;
- c) Specific information to be provided by the Contractor, such as:

A proposed work plan for the required services; Any maximum timeframe to complete the services required; Any required places(s) where work must be performed; State furnished information, work site, and /or access to equipment, facilities, or personnel;

d) Requirements for meetings and reports;

B. The Contractor shall e-mail or fax a response to the Contract Manager within the specified time and shall include at a minimum:

- a) A response to the description of the service that details the Contractor's understanding of the work;
- b) A description of the proposed work plan including time schedules, in narrative (including, if specifically required/requested, a GANTT chart) to accomplish the requisite task. This description shall include a schedule of resources and related tasks, including an explanation of how these tasks will be completed.
- c) Identification of those activities or phases that can be completed independently or simultaneously versus those that must be completed before another activity or phase can commence.
- d) The personnel resources, including those of subcontractor(s), and estimated hours to complete the task.
- e) A detailed written description of any work to be subcontracted, and the name and address of the subcontractor(s).
- f) Proposed approach to satisfying the requirements of the task and development of task deliverables.
- g) A detailed cost estimate, using projected hours for each labor category and applicable staff members, to complete the project.

C. The Contract Manager will review the response and will either approve the work and provide a notice to proceed (NTP) or contact the Contractor to obtain additional information, clarification or revision to the work. If satisfied, the Contract Manager will then provide the NTP.

3.3 Deliverables

Deliverables will be defined within each task order.

3.4 Personnel

3.4.1 The Contractor shall provide personnel to satisfy the requirements of Sections 3.2 through 3.3.

3.4.2 Substitution of Personnel

Substitutions will be allowed only when MEA Contact Manager specifically agrees to the substitution in writing or due to an emergency circumstance. All proposed substitutes of personnel must have qualifications at least equal to that of the person initially proposed and evaluated and accepted in the Contract. The burden of illustrating this comparison shall be the Contractor's. All proposed substitutions of personnel for other than emergency situations must be submitted in writing, at least 10 business days in advance of the proposed substitution, to MEA. MEA must agree to the substitution in writing before such substitution shall become effective.

3.4.3 Personnel Labor Classifications/Requirements

The following labor categories have been established for this RFP and the resulting contract. The Contractor shall provide personnel in each labor category that meet the minimums stated for that labor category. In addition to the stated minimums, the project team shall be made up of one or more members who have knowledge of the following:

- Energy efficiency, demand response and renewable programs in the residential, commercial, industrial, institutional, and multifamily sectors;
- Evaluation techniques for energy efficiency, demand response, renewable and administrative support programs;
- Measurement and verification for energy efficiency, demand response, renewable and administrative support programs;
- Current EM&V program review strategies;
- Current primary and secondary market research techniques for energy programs;
- Data collection techniques that produce market acceptable validity;
- Data system design and management for EM&V results; and
- Communication strategies for informing program enhancements based on program evaluation results.

1. Project Manager

The project manager position manages and directs all the resources of the program and any subcontractors in developing and providing all the deliverables identified under the task orders of the contract. The project manager directs projects, providing advice in support of customer priorities. Master's degree in evaluation, statistics, energy policy, science, engineering, business, technical or other relevant disciplines recommended; or equivalent combination of education and experience. Demonstrable, expert, and relevant experience with subject areas requested in this RFP, including experience with client negotiation, managing and overseeing projects and staff, and financial planning. Must have good interpersonal, conflict resolution, communication, and teaming skills.

2. Senior Program Analyst

Advanced-level analyst position, directing projects and having responsibility for tasks/subtasks and work delivery. Applies broad and in-depth knowledge of procedures and techniques in evaluation, measurement and verification, market, economic, and/or technology analysis to lead evaluation analysis activities. An advanced degree in energy policy, economics, science, engineering, or other relevant field recommended; or equivalent combination of education and relevant experience. Demonstrable, expert, and relevant science, energy policy, energy market, and/or technology analysis experience, including experience in managing projects with moderate complexity and impact. Must have excellent interpersonal

and communication (oral and written) skills and demonstrated leadership in areas of team, task, or project lead responsibilities.

3. Program Analyst

Intermediate-level analyst position, having responsibility for work delivery and performance. Supports analysis activities and provides input and support for projects based upon sound science, energy policy, market, and/or technology analysis principles, procedures, and concepts. Master's degree in energy policy, evaluation, statistics, economics, science, engineering, business, or other relevant field, or equivalent relevant experience. Demonstrable, intermediate relevant experience in science, energy analysis, evaluation research, market, or technology analysis, including experience with energy efficiency practices, techniques, and problem solving methodologies. Must have good interpersonal and communication (oral and written) skills. Computer literate (hardware operation, required software development and/or utilization.)

4. Junior Program Analyst

First-level position, reporting to senior staff for work delivery and performance. Worker-contributor in supporting the evaluation, measurement and verification program with a background in energy research and/or policy, market assessment, energy program design and implementation, environment and/or technology/analysis areas; performs work under supervision. Fundamental knowledge of energy program design and implementation, evaluation strategies, measurement of energy measures, market and/or technology analysis practices, procedures, and concepts and demonstrated understanding of the relevant field. Basic abilities in practices, techniques, and problem solving methodologies in energy program evaluation, market, and/or technology analysis. Bachelor's degree in energy research, energy program design, evaluation, statistics, economics, science, engineering, or other relevant field, or equivalent relevant experience. Basic computer literacy (hardware operation, common software, etc.)

5. Administrative Support

First-level through intermediate administrative assistant position, executing assignments under general direction and supervision. Administrative-support contributor, performing standard administrative functions. Basic knowledge and demonstrated understanding of principles, procedures, and practices related to specific administrative-support field. High school diploma or GED (including specialized training in administrative support functions), or equivalent relevant experience. Must have basic to intermediate written and communication skills; good teamwork and interpersonal skills. Skills in basic business and computer operation, including the use of software programs related to position.

6. Market Research Manager

Intermediate through advanced-level marketing research manager position, directing and/or having responsibility for marketing work delivery and performance. Leads in market research development. Intermediate knowledge of energy efficiency practices, techniques, and messaging. Advanced degree in market research, evaluation, statistics or other relevant field, or combination of education and equivalent relevant experience. Demonstrable, intermediate to expert, and relevant experience in marketing research, evaluation, statistics, and/or education. Must have excellent interpersonal and communication (oral and written) skills. Computer literate (hardware operation, required software development and/or utilization.)

7. Evaluation Specialist

Intermediate through advanced level evaluation specialist position, directing and /or having responsibility for evaluation plan development and implementation. Leads the evaluation process with at least intermediate knowledge of renewable and energy efficiency practices and techniques.

8. Engineer – Energy Specialist

Intermediate through advanced-level engineer with energy expertise. Experience in assessing the proper installation of energy efficiency/renewable energy and demand reduction measures associated with energy programs identified in this RFP. Knowledge of overall energy efficiency and demand measures. Must have excellent interpersonal and communication (oral and written) skills.

9. Survey Specialist

Intermediate through advance-level survey specialist with expertise in the development of survey strategies and instruments along with experience in managing the implementation of survey/assessments on programs and projects. Demonstrable, intermediate to expert experience in market research and evaluation, and /or education. Must have excellent interpersonal and communication (oral and written including computer) skills.

3.5 Reports

3.5.1 The Contractor shall provide monthly written Status/Progress Reports to the Contact Manager throughout the period of performance. Reports will be submitted to the Contract manager no later than the 5th calendar day of the following month.

3.5.2 The Contractor and its MBE subcontractor(s) shall provide monthly reports as required in Attachment D.

3.6 Security and Confidentiality

MEA may require the Contractor and its subcontractors to sign confidentiality agreements (Attachment H) or comply with security policies or practices.

3.7 Invoicing

3.7.1 All invoices for services shall be submitted to the Contract Manager no later than 30 calendar days following the month the service was provided and include the following information: Maryland Energy Administration, 1623 Forest Drive, Suite 300, Annapolis, Maryland 21403, Contractor name, remittance address, federal taxpayer identification or (if owned by an individual) his/her social security number, invoice period, invoice date, invoice number, amount due, the purchase order number(s), signed, approved task order and PCAs to be billed. Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information.

3.6.2 Contractor shall have a process for resolving billing errors.

3.8 Insurance

3.8.1 The Contractor shall maintain property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees or subcontractors.

3.8.2 The Contractor shall maintain a policy of general liability insurance that is of the proper type and limits specified below.

3.8.3 The Contractor shall provide a copy of the Contractor's current certificate of insurance, that, at a minimum, shall contain the following:

A) Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.

B) General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.

\$1,000,000 - General Aggregate Limit (other than products/completed operations)

\$ 500,000 - Products/completed operations aggregate limit

\$ 500,000 - Each Occurrence Limit

\$ 500,000 - Personal and Accidental Injury Limits

\$ 50,000 - Fire Damage Limit

\$ 5,000 - Medical Expense

\$ 500,000 – Errors and Omissions

3.8.4 Upon execution of a Contract with the State, Contractor shall provide the State with current certificates of insurance, and shall update such certificates from time to time, as directed by the State.

3.8.5 The State shall be named as an additional named insured on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage (Worker's Compensation excepted). Certificates of insurance evidencing this coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Procurement Officer, by certified mail, not less than 60 days advance notice of any non-renewal, cancellation, or expiration. In the event the State receives a notice of non-renewal, the Contractor shall provide the State with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

3.8.6 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the State with the same documentation as is required of the Contractor.

3.9 State furnished Work Site, And/or Access To Equipment, Facilities or Personnel

MEA will provide typical office furnishings (desk, phone, computer, fax access, etc) for up to 3 of the Contractor's assigned personnel during the performance of this contract if MEA thinks it is necessary to be on sight for portions of the contract period.

SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Offerors shall submit proposals in separate volumes:

- Volume I - TECHNICAL PROPOSAL
- Volume II - FINANCIAL PROPOSAL

4.2 Proposals

Volume I-Technical Proposal shall be sealed separately from Volume II-Financial Proposal but submitted simultaneously to the Procurement Officer (address listed on Key Information Summary). An unbound original, so identified, and three (3) copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word format (no smaller than font size 11) and the Volume II- Financial Proposal in MS Word format (no smaller than font size 11) shall also be submitted with the unbound originals technical or financial volumes, as appropriate. Electronic media is to be submitted on a CD and shall bear a label on the outside containing the RFP number and name, the name of the Offeror and the volume number.

4.3 Submission

Each Offeror is required to submit a separate file for each "Volume", which is to be labeled Volume I- Evaluation, Measurement and Verification of MEA-Funded Programs for the Maryland Energy Administration - Technical Proposal and Volume II- Evaluation, Measurement and Verification of MEA Funded Programs for the Maryland Energy Administration - Financial Proposal. Each file shall bear the RFP title and number, name and address of the Offeror, the volume number (I or II), and closing date and time for receipt of the proposals.

All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

4.4 Volume I – Technical Proposal

4.4.1 Transmittal Letter

A transmittal letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. See Offeror's responsibilities in Section 1.20.

4.4.2 Additional Required Technical Submissions

- A) Completed Bid/Proposal Affidavit (Attachment B – with original of Technical Proposal only)
- B) Completed Minority Business Participation Forms (Attachments D-1 and D-2 with original of Technical Proposal only) **CAUTION: FAILURE TO SUBMIT OR PROPERLY COMPLETE THE D-1 OR D-2 WILL RESULT IN THE OFFEROR'S PROPOSAL BEING REJECTED.**
- C) Completed Non-Disclosure Affidavit (Attachment G with original of Technical Proposal)
- D) Completed Conflict of Interest Affidavit (Attachment H with original of Technical Proposal)
- E) Completed Living Wage Affidavit (Attachment J—with original of Technical Proposal only).

4.4.3 Format of Technical Proposal

Inside a sealed package described in Section 4.3, above, an unbound original, to be so labeled, three (3) copies and the electronic version shall be provided. Section 3 of this RFP provides requirements and Section 4 provides reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposals should be organized and numbered in the same order as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by paragraph number.

The Technical Proposal shall include the following section in this order:

4.4.4 Title and Table of Contents

The Technical Proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents shall follow the title page for the Technical Proposal. Note: Information which is claimed to be confidential is to be placed after the Title page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included.

4.4.5 Executive Summary

The Offeror shall condense and highlight the contents of the technical proposal in a separate section titled "Executive Summary".

The summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If no exceptions to terms and conditions are made, the summary shall indicate this.

4.4.6 Offeror Experience and Capabilities

Offerors shall include information on past experience with similar projects/services. Offerors shall describe how their organization can meet the qualifications of this RFP and shall include the following:

4.4.6.1 An overview of the Offeror's experience and capabilities providing services. This description shall include:

- An overview of the Offeror's experience providing consulting services projects. This description shall include a general summary of the services offered in terms of:
 - o The extent of similar services to those required under this RFP
 - o The number of years the Offeror has provided these services
 - o The number of clients and geographic locations the Offeror currently serves
- References. Provide all or a reasonable number of specific references who are capable of documenting:
 - o The Offeror's ability to manage services of the type described in this RFP
 - o The quality and breadth of services provided by the Offeror
 - o Each client reference must include the following information:
 - Name of client organization.
 - Name, title, and telephone number of point-of-contact for client organization.
 - Value, type, and duration of contract(s) supporting client organization.

- The services provided, scope of the contract, geographic area being supported, performance objectives satisfied, and improvements made for the client (e.g. reduction in operation/maintenance costs while maintaining or improving current performance levels).
- Sustainability. Describe measures your business has taken to increase the environmental and energy sustainability of your business and/or physical building.

4.4.6.2 As part of its proposal, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which have been completed within the last 5 years. For each identified contract the Offeror is to provide:

- The State contracting entity;
- A brief description of the services/goods provided;
- The dollar value of the contract;
- The term of the contract;
- The State employee contact person (name, title, telephone number and if possible e-mail address); and
- Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the offeror's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

Note:

(1) The Procurement Officer or a designee will contact the identified State agencies or the most appropriate ones, if many contracts are involved, to ascertain the Offeror's level of performance of State contracts. Information obtained regarding the Offeror's level of performance on State contracts will be considered as part of the experience and past performance evaluation criteria of the RFP.

(2) MEA shall have the right to contact any reference as part of the evaluation and selection process. MEA also reserves the right to request site visits to the Offeror's offices for the purpose of evaluating proposals.

MEA reserves the right to request additional references.

4.4.7 Offeror Technical Response to RFP Requirements

The Offeror shall address each element of Section 3 in its Technical Proposal and describe how its proposed services will meet the requirements as described in the RFP. The Offeror shall identify the location(s) it proposes to provide the service, and any current facilities that it operates at that location to satisfy the State's requirements as outlined in this RFP. If the State is seeking Offeror agreement to a requirement, the Offeror shall state agreement or disagreement.

As stated above, any exception to a term or condition may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. Any paragraph that responds to a work requirement shall include an explanation of how the work will be done by task.

Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing will only be included in the Financial Proposal (Volume II).

4.4.8 Offeror's Understanding and Project Management Methodology

In its proposal the Offeror should describe its overall approach for managing a Contract and satisfying the requirements of this RFP. Topics to be addressed include:

- A. ***Understanding*** - The Offeror's understanding of the consulting services to be provided. This should demonstrate an understanding of the services expected under this Contract.
- B. ***Project Management Methodology*** - The Offeror's approach to managing the overall project identified in this RFP. The overall Project Management approach should include the following items:
 - Project Organization (including identification and role of subcontractors).
 - Offeror Support Resources that will be available, including Personnel and Technology Resources.
 - Project Management Planning and Tracking System.
 - Project Reporting Methodologies.
 - The personnel who will participate in periodic, scheduled meetings with MEA personnel and the manner in which the Offeror will provide updates/progress reports.
 - The availability of the Offeror to perform this Contract, including the flexibility to dedicate staff to these efforts.

4.4.9 Personnel

Identify all proposed personnel and the Contractor's Project Manager. Provide a 2 page resume for all proposed personnel that includes experience pertaining to the RFP. Also, identify and include the names and titles of the key management personnel directly involved with supervising the services rendered under this Contract.

4.4.10 Economic Benefit to Maryland

Offeror shall submit with the proposals a narrative describing the benefits that will accrue to the Maryland economy as a direct or indirect result of the performance of this contract. Proposals will be evaluated to assess the following economic benefit factors.

- A. Percentage of contract dollars to be recycled into Maryland's economy in support of the contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Be as specific as possible.
- B. The number and types of jobs for Maryland residents resulting from the contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed at both prime and, if applicable, subcontract levels.
- C. Tax revenues to be generated for Maryland and its political subdivisions as a result of the contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the contract.
- D. Other benefits to the Maryland economy, which the Offeror promises, will result from awarding to the Offeror. Describe the benefit, its value to the Maryland economy and how it will result from the contract award.

- E. The amount or percentage of subcontract dollars placed with Maryland Small Business or Maryland MBEs.

4.4.11 Subcontractors

Offerors must identify subcontractors, including those used solely to meet MBE participation goals, and the role these subcontractors will have in the performance of the contract.

4.4.12 United States Department of Energy (DOE) Requirements

Offerors must submit their DUNS number, name registered with the DUNS for approval by DOE and their Central Contractor Registration (CCR) number. Reference page 32: 5.5.3 Award Determination.

4.4.13 Supplementary Information

Offerors should provide a written example of a sample EM&V strategy and recommended methodology for implementation. The example could deal with an EnergyStar appliance rebate program, a renewable energy project or other example that highlights their approach to meeting this contract's EM&V requirements.

4.5 Volume II - Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 4.3, the Contractor shall submit an original unbound copy, three copies, and an electronic version in MS Word of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in Attachment E. Complete the price sheets only as provided in the Price Proposal Instructions.

SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE

5.1 Evaluation Criteria

Evaluation of the proposals will be based on the criteria set forth below. The Contracts resulting from this RFP will be awarded to the Offeror that is most advantageous to the State, considering price and the technical factors set forth herein. In making this determination, technical will receive greater weight than price factors.

5.2 Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance:

- Offeror's Technical Response to RFP Requirements. An Offeror's response to the RFP shall illustrate a comprehensive understanding of the requirements and include an explanation of how the service will be provided. (Ref. Section 4.4.7)
- Offeror/Subcontractor(s) Experience and Capabilities (Ref. Section 4.4.6 & 4.4.11)
- Offeror's Understanding and Project Management Methodology (Ref. Section 4.4.8)
- Offeror's Proposed Personnel (Ref. Section 4.4.9)
- Economic Benefits (Ref. Section 4.4.10)
- Offeror's Approval by the U.S. Department of Energy (4.4.12)

5.3 Financial Criteria

All qualified Offerors will be ranked from the lowest to the highest price based on their total composite labor rate price proposed (as submitted on Attachment E—Price Proposal Form).

5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement Contract. The preference given shall be identical to the preference that the other state, through law, policy or practice gives to its residents.

5.5 Selection Procedures

5.5.1 General Selection Process

The Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03. The competitive sealed proposals method is based on discussions and revision of proposals during these discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions. In either case of holding discussions or not doing so, the State may determine an Offeror to be not responsible and/or an Offeror's proposal to be not reasonably susceptible of being selected for award, at any time after the initial closing date for receipt of proposals and the review of those proposals. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, an Offeror's financial proposal will be returned unopened.

5.5.2 Selection Process Sequence

- 5.5.2.1 The first step in the process will be an evaluation for technical merit. During this review oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform, and to facilitate arrival at a Contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two weeks of the delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.
- 5.5.2.2 Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.
- 5.5.2.3 The financial proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of qualified Offerors, the Procurement Officer may again conduct discussions to further evaluate the Offeror's entire proposal.
- 5.5.2.4 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs). However, the State reserves the right to make an award without issuing a BAFO if/when it's determined to be in the State's best interest.

5.5.3 Award Determination

Upon completion of all discussions and negotiations, reference checks, and site visits, if any, the Procurement Officer will recommend award of the Contract to the responsible Offeror whose proposal is determined to be the most advantageous to the State considering technical evaluation factors and price factors as set forth in this RFP.

In making the most advantageous Offeror determination, technical factors will be given greater weight than price factors.

The Contract awarded to the successful Offeror pursuant to this RFP is made possible in whole or in part by funds made available to the Administration through the United States Department of Energy (DOE). DOE terms and conditions accompanying the funding for the Contract mandate that the successful Offeror submit a Federal Grant Forms SF424A– Nonconstruction Programs, and Budget Justification.

The Administration's selection of the successful Offeror is subject to final review and approval by DOE.

ATTACHMENTS

ATTACHMENT A is the State's Contract. It is provided with the RFP for informational purposes and is not required at proposal submission time. However, it must be completed, signed and returned by the selected Offeror to the Procurement Officer expeditiously upon notification of proposed Contract award.

ATTACHMENT B – Bid/Proposal Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT C – Contract Affidavit. It is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer within 5 working days of notification of proposed award.

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE PRATICIPATION INSTRUCTIONS AND FORMS D-1 THROUGH D-6. Forms D-1 and D-2 must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT E – Pre-Proposal Conference Response Form. It is requested that this form be completed and submitted as described in RFP section 1.7 by those potential Offerors who plan on attending the conference.

ATTACHMENT F –Price Proposal Instructions and Forms. Price Proposal forms must be completed and submitted as the Financial Proposal.

ATTACHMENT G – Non-Disclosure Form.

ATTACHMENT H – Conflict of Interest Affidavit.

ATTACHMENT I – Living Wage Information.

ATTACHMENT J – Living Wage Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT A – CONTRACT

Evaluation, Measurement and Verification Technical Assistance- for the Maryland Energy Administration

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 2010 by and between _____ and the STATE OF MARYLAND, acting through the MARYLAND ENERGY ADMINISTRATION.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Contract Manager” means Robert Howatt, Director of Planning, Maryland Energy Administration.
- 1.2 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.
- 1.3 “Department” means the Maryland Energy Administration.
- 1.4 “Financial Proposal” means the Contractor’s Financial Proposal dated _____.
- 1.5 “Procurement Officer” means Maria Ulrich, Maryland Energy Administration
- 1.6 ”RFP” means the Request for Proposals for Energy Efficiency Technical Assistance for the Maryland Energy Administration, Project #DEXR0400037, and any amendments thereto issued in writing by the State.
- 1.7 “State” means the State of Maryland.
- 1.8 “Technical Proposal” means the Contractor’s Technical Proposal, dated _____.

2. Scope of Work

2.1 The Contractor shall provide all deliverables as defined in the RFP Section 3. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- Exhibit A – The RFP
- Exhibit B – The Technical Proposal
- Exhibit C – The Financial Proposal
- Exhibit D - State Contract Affidavit, executed by the Contractor and dated _____

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement or conduct of the Procurement

Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.3 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

3. Time for Performance.

The Contract resulting from this RFP shall commence upon the issuance of the Notice-To-Proceed and end June 30, 2012. The Contractor shall provide services upon receipt of a Notice to Proceed from the Procurement Officer.

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Exhibit C, Contractor's Financial Proposal.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Contractor's eMarylandMarketplace vendor ID number is _____.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have

the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Exclusive Use

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

7. Patents, Copyrights, Intellectual Property

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party’s patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor’s expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

10. Indemnification

10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

10.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

10.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

10.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

11. Non-Hiring of Employees

No official or employee of the State, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13.2 The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any purchase order, or Notice to Proceed, issued under this Contract.

13.3 Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance

of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

19. Delays and Extensions of Time

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, §§14-101 - 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

24. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract closeout and final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current.

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 11 and 13 through 26 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

28. Prompt Payment Requirements and MBE Compliance

28.1. If a Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified
- (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

28.2. An "undisputed amount" means an amount owed by a Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation, (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

28.3. An act, failure to act, or decision of a procurement officer or a representative of the Department, concerning a withheld payment between a Contractor and subcontractor under this provision, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the Department.

28.4. The remedies enumerated above are in addition to those provided under COMAR

21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

- 28.5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - (b) This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - a. The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
 - (c) If the Department determines that a Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - (d) If the Department determines that a Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
 - (e) Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

29. Liability

29.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- A. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;
- B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;
- C. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10, "Indemnification", of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising

under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

30. Parent Company Guarantee (If Applicable)

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Contractor]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

31. Commercial Non-Discrimination

- 31.1** As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 31.2** The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by MEA, in all subcontracts.
- 31.3** As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may

result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

32. American Recovery and Reinvestment Act of 2009 (ARRA) Terms and Conditions

32.1 General Information. Funding for this Contract is made available through the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA or Recovery Act), federal regulations and ARRA implementing guidance from the federal government and the State, as may be revised and updated from time to time (collectively “ARRA Requirements”). Use of ARRA funds comes with significant terms and conditions. The Contractor agrees to abide by all ARRA terms and conditions contained in this Section 32, as well as all ARRA Requirements. The Contractor shall ensure that any sub-recipient of any funds provided through this Contract (including any contractors or subcontractors) complies with the provisions of this Section 31 and all ARRA Requirements. The Contractor agrees that it will comply with all modifications or additional requirements that may be imposed by law, future guidance and clarifications of ARRA Requirements. The Contractor agrees that to the extent ARRA Requirements conflict with State requirements, the ARRA Requirements shall control.

32.2 Failure to Comply. The Contractor agrees that if it or one of its contractors or subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the Contract, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

32.3 Recovery Act Goals. ARRA was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients of ARRA funds shall use them in a manner that maximizes job creation and economic benefit.

The Contractor shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Recovery Act itself and as discussed below. The Contractor should begin planning activities for its contractors and subcontractors, including having them obtain a Dun & Bradstreet DUNS number (or updating their existing DUNS record) (see below for more information), and registering with the federal government’s Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, the Contractor must ensure that it and its contractors and subcontractors keep separate records for Recovery Act funds, and ensure those records comply with the requirements of the Recovery Act.

The Federal Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific final procedural requirements for the new reporting requirements. The State will provide the Contractor (or make the Contractor aware) with these details as they become available. The Contractor must comply with all requirements of the Recovery Act. If the Contractor believes there is any inconsistency between ARRA Requirements and other Contract terms and conditions contained herein, the issues are to be referred to the State for reconciliation.

32.4 NEPA. The Contractor shall not use any part of the funds made available to it by the State pursuant to this Contract for any activity or project that has not been deemed by the United States Department of Energy to be categorically excluded from environmental assessment requirements under the provisions of the National Energy Policy Act (NEPA).

32.5 Segregation of Costs. The Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

32.6 Restrictions of Use of Funds. None of the ARRA-derived funds provided to the Contractor may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

32.7 Access to Records and Interviews. The Contractor agrees that the United States Inspector General or any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or the United States Comptroller General is authorized – (1) to examine any records of the Contractor, any of its contractors or subcontractors, or any State or local agency administering this Contract that pertain to, and involve transactions relating to, this Contract or any subcontract the Contractor awards to contractors or subcontractors; and (2) to interview the Contractor or any officer or employee of its contractors or their subcontractors, or any State or local agency administering this Contract, regarding such transactions. Nothing in this Paragraph shall be interpreted to limit or restrict in any way any existing authority of the United States Comptroller General. The Contractor shall include in all of its agreements with contractors and subcontractors who are performing work funded in whole or in part with ARRA funds pursuant to this award, and shall require all subcontractors to include with lower tier subcontractors, the language provided in this Paragraph.

32.8 Whistleblower Protection. The Contractor and its contractors and subcontractors agree to abide by the requirements of Section 1553 of the Recovery Act, which are summarized below. They include, but are not limited to

A. Prohibition on Reprisals An employee of any non-Federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the federal Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of

- Gross mismanagement of an agency contract or grant relating to ARRA funds;
- A gross waste of ARRA funds;
- A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
- An abuse of authority related to the implementation or use of ARRA funds; or
- A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds.

B. Agency Action Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

C. Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration

Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

D. Requirement to Post Notice of Rights and Remedies The Contractor and any of its contractors or subcontractors (with employees) receiving ARRA funds shall post notice of the rights and remedies as required therein, including Recovery Act section 1553. More information related to ARRA Whistleblower Protection requirements, including a downloadable poster, can be found at <http://www.oig.dol.gov/recovery/arrawhistleblowers.htm>.

32.9 False Claims Act. The Contractor and any of its contractors and subcontractors shall promptly refer to the United States Department of Energy or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

32.10 Information in Support of Recovery Reporting. The Contractor may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. The Contractor shall provide copies of backup documentation at the request of the State or its designees.

32.11 Reporting and Registration Requirements. The Contractor shall adhere to the following reporting requirements in addition to any other reporting requirements listed herein or otherwise made known to the Contractor by the State

- (a) This Contract requires the Contractor to complete projects or activities which are funded under the Recovery Act and to report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
- (b) The Contractor and its contractors must maintain current registrations in the federal government's Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and

Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration. The Contractor should instruct its contractors and subcontractors to obtain DUNS numbers, which the Contractor will collect and report to the State as part of its regular reporting obligations.

- (c) The Contractor shall report to the State no later than the fifth (5th) calendar day of each month, for the previous month's reporting data in which the Contractor receives the assistance award funded in whole or in part by the Recovery Act, the following information, as well as any changes, amendments or modifications to such reporting data:

- Contractor DUNS #
- Other Contractor/Subcontractor DUNS#s
- Award Name and #
- **Project Information (to be completed for each project and for each contractor and subcontractor working on a project)**
 - Contact Person
 - Alternate Contact Person
 - Street Address
 - City
 - State
 - Zip Code
 - Phone
 - E-mail
 - Fax
 - Federal ID#
 - Congressional District
 - County
 - MBE
 - MBE Goal
 - MBE Commitment Amount
 - MEA Project Manager
 - Target Energy Saved
 - Actual Energy Saved
 - Energy Saved in BTUs
 - Cumulative Number of Hours Worked by Project Employees
 - Number of Hours in Full-Time Employee Schedule
 - Jobs Retained (designate full-time and part-time)
 - Jobs Created (designate full-time and part-time)
 - Description of Jobs Retained and Jobs Created
 - Leveraged Funds Amount
 - Origin of Leveraged Funds
- **Funding Information (to be completed for each project)**
 - Requested Amount
 - Award Amount
 - Encumbered
 - Spent
 - Funding Type (i.e. grant, loan, contract)
 - Sector
 - Contract #
 - PO
 - Funding Source
 - Funding Classification
 - Appropriation
 - Program #
 - Fiscal Year
 - Project Description
 - Start Date
 - End Date
- **Additional Project Information**
 - Low and Moderate Income Participation
 - Number of Participants
- **Greenhouse Gas Reductions**
 - CO2 lbs
 - CH4 lbs
 - N2O lbs
- **Activities** (all ARRA funds must be labeled by activity)
 1. **Building Codes and Standards**
 - Name of code adopted
 - Name of code replaced
 - Number of new and existing buildings covered by code
 2. **Number of Building Retrofits**
 - Number of buildings retrofitted, by sector
 - Square Footage of buildings retrofitted, by sector
 3. **Clean Energy Policy**
 - Number of alternative energy plans developed or improved

-Number of renewable portfolio standards established or improved

-Number of interconnection standards established or improved

-Number of energy efficiency portfolio standards established or improved

-Number of other policies developed or improved

-Types of policies

4. Building Energy Audits

-Number of audits performed by sector

-Floor space audited by sector

-Auditor's projection of energy savings by sector

5. Energy Efficiency Rating and Labeling

-Types of energy consuming devices for which energy efficiency rating and labeling systems were endorsed by the recipient

6. Government, School and Institutional Procurement

-Number of units purchased by type

7. Industrial Process Efficiency (kwh equivalents)

-Reduction in natural gas consumption (mmcf)

-Reduction in fuel oil consumption (gallons)

-Reduction in electricity consumption (MWh)

8. Loans and Grants

-Number of loans given

-Monetary value of loans given

-Number of grants given

-Monetary value of grants given

9. Renewable Energy Market Development

-Number of solar energy systems installed (hotwater or PV)

-Size of solar energy systems installed

-Number of wind energy systems installed

-Size of wind energy systems installed

-Number of other energy systems installed (i.e. geothermal, biomass)

-Size of other energy systems installed

-Types of Renewable Energy Systems installed

10. Financial Incentives for Energy Efficiency and Other Covered Investments

-Monetary value of financial incentive by sector

-Total value of investments incentivized by sector

11. Technical Assistance

-Number of information contacts (i.e. Webinars, site visits, media, fact sheet) in which energy efficiency or renewable were recommended by sector

12. Transportation

-Number of alternative fuel vehicles purchased

-Number of conventional vehicles purchased

-Number of new alternative refueling stations emplaced

-Number of new carpools and vanpools formed

-Number of energy efficiency traffic signals installed

-Number of street-lane miles for which synchronized traffic signals were installed

13. Workshops, Training and Education

-Number of workshops, training and education sessions held by sector

-Number of people attending workshops, training and education sessions by sector

• Additional Achievements to Note/Miscellaneous Notes

Please list any additional achievements or miscellaneous notes

32.12 Required Use of Maryland Workforce Exchange. This Contract is made possible in whole or in part by federal ARRA monies. To as quickly as possible help achieve the hiring of individuals into jobs that are ARRA-funded in whole or in part, the Contractor and any of its contractors and subcontractors shall

- A. Post all jobs which are to be newly filled, whether for an entirely new job or for an existing job that is currently vacant, on the Maryland Workforce Exchange website of the Maryland Department of Labor, Licensing and Regulation. The link to the applicable website is <https://mwe.dllr.state.md.us/default.asp?SessionUID=a>. Posting shall be done after funding is made available to the Contractor pursuant to this Contract, as part of “start-up” procedures to fulfill the requirements of this Contract.
- B. Continue to post for the duration of this Contract, on the Maryland Workforce Exchange new jobs that are created to perform under this award, and existing jobs that are filled as a result of turnover of existing employees that fully or substantially work under this award.
- C. Stipulate the requirements for posting job openings with the Maryland Workforce Exchange, as per clauses A and B of this Paragraph, as requirements for any sub recipient(s) the Contractor uses in the fulfillment of this Contract.

The requirements to post ARRA-funded job openings on the Maryland Workforce Exchange, as per clauses A, B and C of this Paragraph, are not meant to be the exclusive means for the Contractor or any of its contractors or subcontractors to hire employees. The Contractor or any of its contractors or subcontractors may use any other means of job advertising and recruitment, in addition to the use of the Maryland Workforce Exchange. The Contractor is not required to post on the Maryland Workforce Exchange those jobs the Contractor or its contractors or subcontractors intend to fill with a present employee, a laid-off former employee or a job candidate from a previous recruitment.

32.13 Federal Prevailing-Wage Rate and Buy American. Neither the State nor the Contractor expects or anticipates that any construction work will be performed pursuant to this Contract. In the event the Contractor or any of its contractors or subcontractors engages in construction work funded in whole or in part with ARRA monies made available through this Contract, the Contractor and its contractors and subcontractors will adhere to all federal prevailing-wage rate (Davis-Bacon Act) and Buy American requirements of ARRA.

33. Administrative

33.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

33.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403

Attention: Robert Howatt

If to the Contractor: _____

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND

BY: MARYLAND ENERGY ADMINISTRATION

By:

By: Malcolm D. Woolf, Director

Date

Date

Witness

Witness

Approved for form and legal
sufficiency this ____ day _____, 2010.

Assistant Attorney General

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

- (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
- (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred

(including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;

- (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
 - (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
 - (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
 - (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ____) (foreign ____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____.

(If not applicable, so state).

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____ (Authorized Representative and Affiant)

ATTACHMENT C - CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the _____ (Title) and the duly authorized representative of _____ (Company) and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic____) (foreign____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name:_____

Address:_____.

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

D: UNITED STATES DEPARTMENT OF ENERGY (DOE) TERMS AND CONDITIONS

I FURTHER AFFIRM THAT:

I am aware that pursuant to the United States Department of Energy (DOE) terms and conditions associated with the funding for the Contract, DOE has final review and approval of the Maryland Energy Administration's selection of _____ as the Contractor.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:_____

By:_____

(Authorized Representative and Affiant)

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE

MARYLAND ENERGY ADMINISTRATION

The Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the Minority Business Enterprise (MBE) participation goal stated in the Invitation for Bids (IFB) or Request for Proposals (RFP). MBE performance must be in accordance with this Attachment, as authorized by Minority Business Enterprise Policies as set forth by 21.11.03 of the Code of Maryland Regulations (COMAR). Accordingly, the Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

DEFINITIONS

As used in this Attachment, the following words have the meanings indicated.

- ◆ “Certification” means a determination made by the Maryland Department of Transportation that a legal entity is a minority business enterprise.
- ◆ “MBE Liaison” is the employee designated to administer this Department’s MBE program.
- ◆ “Minority Business Enterprise” or “MBE” means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is:
 - (1) at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and
 - (2) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

Note: A minority business enterprise also includes a not-for-profit entity organized to promote the interests of physically or mentally disabled individuals. An MBE **must** be certified by the Maryland Department of Transportation (MDOT) in order to have its contract participation counted under the Department’s MBE program.

MINORITY BUSINESS ENTERPRISE INSTRUCTIONS AND FORMS

A. MBE Participation Goals and sub-goals

The Contractor shall achieve the MBE subcontracting goal and any sub-goals established for this contract, by subcontracting to one or more MDOT-certified Minority Business Enterprises a sufficient portion of the contract’s scope of work that results in total MBE payments that meet or exceed the MBE participation goal.

If awarded the Contract:

- A prime contractor – including an MBE or certified Small Business Reserve (SBR) prime contractor – must accomplish an amount of work not less than the MBE participation goal with certified MBE subcontractors.
- A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE participation goal with certified MBE subcontractors.

B. Solicitation and contract formation

1. Reporting Instructions for Submission of Bid or Offer:

- a. The bidder or offeror must **include the following reports with its bid or offer:**
 - 1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1) whereby the bidder or offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
 - 2) A completed MBE Participation Schedule (Attachment D-2) whereby the bidder or offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified Minority Business Enterprises at the time of submission. The bidder or offeror shall specify the specific percentage (not range) or dollar amount of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule. **Attachment D-2 shall become part of the final contract, therefore, any changes (additions and/or deletions) must be submitted to the Procurement Officer in writing for approval.**

NOTE: The failure of an offeror to complete and submit the MBE Utilization Affidavit and the MBE Participation Schedule shall result in a determination that the proposal is not susceptible of being selected for award.

- 3) **Within 10 working days from notification** that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.
 - a) Outreach Efforts Compliance Statement (**Attachment D-3**)
 - b) Subcontractor Project Participation Statement (**Attachment D-4**)

- c) If the apparent awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any sub-goal as part of the previously submitted Attachment D-1, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.
- d) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

NOTE: If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

C. CONTRACT ADMINISTRATION REQUIREMENTS:

Prime Contractor shall:

1. **Attachment D-5:** Submit monthly to the Department/Agency a report listing all unpaid invoices over 30 days old received from a certified MBE subcontractor working under the PORFP Agreement, the amount of each invoice and the reason payment has not been made. For informational purposes only, a sample prime contractor unpaid invoice report is attached.
2. **Attachment D-6:** Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department/Agency a report that identifies the prime contract and lists all payments received from the Master Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. For informational purposes only, a sample MBE Subcontractor Paid/Unpaid Invoice report is attached.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Master Contractor must retain all records concerning

MBE participation and make them available for State inspection for three years after final completion of the contract.

5. **COMAR 21.11.03.13F**: A procurement agency may, upon completion of a contract, and before final payment and/or release of retainage or both, require that a prime contractor on any contract having an MBE subcontract goal, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

MINORITY BUSINESS ENTERPRISE PARTICIPATION FORMS

These attachments must be submitted with technical response to the RFP:

ATTACHMENT D-1 – *Certified MBE Utilization and Fair Solicitation Affidavit*

ATTACHMENT D-2 - *MBE Participation Schedule*

**These attachments must be submitted within 10 days after notification of
apparent award of contract:**

ATTACHMENT D3 - *Outreach Efforts Compliance Statement*

ATTACHMENT D-4 - *Subcontractor Project Participation Statement*

**These attachments must be submitted on a monthly (by the 15th) basis after
award of contract or as otherwise directed:**

ATTACHMENT D-5 - *Prime Contractor Unpaid MBE Invoice Report*

ATTACHMENT D-6 - *Subcontractor Paid/Unpaid MBE Invoice Report*

Attachment D-1

CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

This document shall be included with the submission of the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. _____, I affirm the following:

1. Commitment to MBE Participation Goal or Request for Waiver (check applicable box):

- ☐ I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of ____ percent and, if specified in the solicitation, sub-goals of ____ percent for MBEs classified as African American-owned and ____ percent for MBEs classified as women-owned. I have made a good faith effort to achieve this goal.

OR

- ☐ After having made a good faith effort to achieve the MBE participation goal, I conclude I am unable to achieve it. Instead, I intend to achieve an MBE goal of _____% and request a waiver of the remainder of the goal. If I submit the apparent low bid or am selected as the apparent awardee (competitive sealed proposals), I will submit written waiver documentation that complies with COMAR 21.11.03.11 within 10 business days of receiving notification that our firm is the apparent low bidder or the apparent awardee.

2. ***I have identified the specific commitment (to include percentage of total contract) of each certified Minority Business Enterprise by completing and submitting the MBE Participation Schedule (Attachment D-2) with the bid or proposal.***
3. ***I acknowledge that the MBE subcontractors/suppliers listed on the MBE Participation Schedule will be used to accomplish the percentage of MBE participation that is included in the contract.***
4. I understand that if I am notified that I am the apparent awardee, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
- (a) Outreach Efforts Compliance Statement (**Attachment D-3**)
 - (b) Subcontractor Project Participation Statement (**Attachment D-4**)
 - (c) MBE Waiver Request per COMAR 21.11.03.11 (if applicable)
 - (d) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal. To include

copies of subcontract agreement or agreements if requested

If I am the apparent awardee I acknowledge that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

5. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.

I solemnly affirm under the penalties of perjury that the contents of this paper are true to the best of my knowledge, information, and belief.

Bidder/Offeror Name

Signature of Affiant

Address

Printed Name, Title

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment D-2

MBE Participation Schedule

(must be submitted with the technical response to the bid or proposal)

This document shall be included with the submittal of the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

Prime Contractor (Firm Name, Address, Phone)	Project Description
Project Number	
List Specific Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
A. Specific Work To Be Performed/NAICS	
B. Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	

USE ATTACHMENT D-2 CONTINUATION PAGE AS NEEDED

SUMMARY

TOTAL MBE PARTICIPATION: _____ %
TOTAL WOMAN-OWNED MBE PARTICIPATION: _____ %
TOTAL AFRICAN AMERICAN-OWNED MBE PARTICIPATION: _____ %

Document Prepared By: (please print or type)

Name: _____ Title: _____

Attachment D-2
MBE Participation Schedule (continued)

List Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	

Attachment D-3
Outreach Efforts Compliance Statement
(for submission within 10 days after notification of apparent award)

In conjunction with the bid or offer submitted in response to Solicitation No. _____, I state the following:

1. Bidder/ Offeror took the following efforts to identify subcontracting opportunities in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

4. ☐ Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements.
(DESCRIBE EFFORTS)

- ☐ This project does not involve bonding requirements.

5. ☐ Bidder/Offeror did/did not attend the pre-bid/proposal conference
☐ No pre-bid/proposal conference was held.

Bidder/Offeror Name

By: _____
Name

Address

Title

Date

Attachment D-4
Subcontractor Project Participation Statement
(for submission within 10 days after notification of apparent contract award)

SUBMIT ONE FORM FOR EACH MBE
LISTED ON THE MBE PARTICIPATION SCHEDULE

Provided that _____ is awarded the State contract in
conjunction with _____.
(Prime Contractor Name)

Solicitation No. _____, it and _____,
(Subcontractor Name)

MDOT Certification No. _____, **intend to enter into a contract by which subcontractor shall:**
(This is not a subcontract agreement. A written copy of subcontractor agreement(s) shall be made available
to Procurement Officer upon request)

(Describe specific Work)

- ☐ No bonds are required of Subcontractor
- ☐ The following amount and type of bonds are required of Subcontractor:

By:

Prime Contractor Signature

Name

Title

Date

By:

Subcontractor Signature

Name

Title

Date

This form is to be completed
monthly by the prime
contractor.

Attachment D-5
Maryland Energy Administration
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid MBE Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Report is due to the MBE Officer by the 15th of the month following the month the services were provided. Note: Please number reports in sequence	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	--

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	FAX:		Email:																																				
Subcontractor Name:		Contact Person:																																					
Phone:	FAX:																																						
Subcontractor Services Provided:																																							
List all payments made to MBE subcontractor named above during this reporting period: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice#</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="3" style="padding-top: 10px;">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$ _____			List dates and amounts of any outstanding invoices: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="3" style="padding-top: 10px;">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$ _____		
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Total Dollars Unpaid: \$ _____																																							

**If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.

****Return one copy (hard or electronic) of this form to the following address (electronic copy with signature and date is preferred):**

MBE Liaison Officer
 Maryland Energy Administration
 1623 Forest Drive, Suite 300
 Annapolis, Maryland 21403
 edonovan@energy.state.md.us

Signature: _____ (Required) Date: _____

This form must be completed by
MBE subcontractor

ATTACHMENT D-6
Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____ Reporting Period (Month/Year): _____ Report is due by the 15th of the month following the month the services were performed.	Contract # Contracting Unit: MBE Subcontract Amount: Project Begin Date: Project End Date: Services Provided:
---	--

MBE Subcontractor Name:																						
MDOT Certification #:																						
Contact Person:		Email:																				
Address:																						
City: Baltimore	State:	ZIP:																				
Phone:	FAX:																					
Subcontractor Services Provided:																						
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%;"><tr><td style="width: 60%;"><u>Invoice Amt</u></td><td style="width: 40%;"><u>Date</u></td></tr><tr><td>1.</td><td></td></tr><tr><td>2.</td><td></td></tr><tr><td>3.</td><td></td></tr><tr><td colspan="2">Total Dollars Paid: \$ _____</td></tr></table>		<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		Total Dollars Paid: \$ _____		List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%;"><tr><td style="width: 60%;"><u>Invoice Amt</u></td><td style="width: 40%;"><u>Date</u></td></tr><tr><td>1.</td><td></td></tr><tr><td>2.</td><td></td></tr><tr><td>3.</td><td></td></tr><tr><td colspan="2">Total Dollars Unpaid: \$ _____</td></tr></table>	<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		Total Dollars Unpaid: \$ _____	
<u>Invoice Amt</u>	<u>Date</u>																					
1.																						
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Total Dollars Paid: \$ _____																						
<u>Invoice Amt</u>	<u>Date</u>																					
1.																						
2.																						
3.																						
Total Dollars Unpaid: \$ _____																						
Prime Contractor:		Contact Person:																				

****Return one copy (hard or electronic) of this form to the following address (electronic copy with signature and date is preferred):**

MBE Liaison Officer Maryland Energy Administration 1623 Forest Drive, Suite 300 Annapolis, Maryland 21403 edonovan@energy.state.md.us

Signature: _____ Date: _____
(Required)

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Project No. -----

Evaluation, Measurement and Verification for the Maryland Energy Administration

A Pre-Proposal Conference will be held on December 2, 2009 at 2:00 AM, at the Department of Budget and Management 45 Calvert Street, Room #164 Annapolis, Maryland 21401. Please return this form by November 30, 2009, advising whether or not you plan to attend.

Return via e-mail or fax this form to the Procurement Officer:

Maria Ulrich
Procurement Officer
1623 Forest Drive, Suite 300
Email: mulrich@energy.state.md.us
Office Phone: 410-260-7655
Fax # (410) 974-2250

Please indicate:

_____ Yes, the following representatives will be in attendance:

1.

2.

_____ No, we will not be in attendance.

Signature

Title

ATTACHMENT F – PRICE PROPOSAL FORM INSTRUCTIONS

By submitting a Technical Proposal and this Price Proposal, the undersigned hereby declares to have carefully examined all documents, attachments and reference materials described within this RFP and Contract document. The undersigned further proposes and agrees to furnish all services necessary for the performance of the above referenced Contract for the Maryland Energy Administration in accordance with the RFP and all other documents referenced by the RFP including all attachments and Addenda issued by MEA.

The Labor Rates (hourly rates) submitted by the Offeror via this Price Proposal shall be fully loaded, including all direct and indirect costs and firm for the full term of the Contract. **Travel expenses will not be reimbursed**

Using the personnel classifications defined in the RFP, Section 3.4., provide the hourly rates in Column C. Multiple the Fully Loaded Hourly Labor Rate © by the State Evaluation Factor (D). Record the results in Column E, Evaluated Price. Add Column E and record the total on line 9. This is the total composite labor rate that will be used to establish the financial ranking of each offeror.

A	B	C	D	E
Item #	Title	Fully Loaded Hourly Labor Rate	State Evaluation Factor	Evaluated Price
1	Project Manager	\$	10%	\$
2	Senior Program Analyst	\$	12%	\$
3	Program Analyst	\$	20%	\$
4	Junior Program Analyst	\$	10%	\$
5	Administrative Support	\$	3%	\$
6	Market Research Manager	\$	5%	\$
7	Evaluation Specialist	\$	20%	\$
8	Engineer –Energy Specialist	\$	15%	\$
9	Survey Specialist	\$	5%	\$
10. TOTAL COMPOSITE LABOR RATE (Add Column E)				\$

Authorized Signature_____

Printed Name & Title:_____

Company Name:_____

Address: _____

Office Telephone: _____

Office Fax No.: _____

FEIN: _____

Email: _____

ATTACHMENT G - NON-DISCLOSURE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 200 __, by and between the State of Maryland (hereinafter referred to as "the State"), acting by and through its Maryland Energy Administration (hereinafter referred to as the "Department"), and _____, a corporation with its principal business offices located at _____ (hereinafter referred to as "Offeror").

RECITALS

WHEREAS, Offeror intends to submit a proposal in response to RFP # **DEXR0400037** for Energy Efficiency Technical Assistance (the "RFP") for the Maryland Energy Administration; and

WHEREAS, in order for the Offeror to submit such a proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information (collectively, the "Confidential Information").

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the Offeror's proposal to the RFP (hereinafter referred to as the "Proposal"), and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Recitals. The Recitals are not merely prefatory but are an integral part hereof.
2. Offeror's qualifications. Offeror represents and warrants that:
 - A. It is qualified to do business in the State and that it will take such actions, from time to time hereafter, as may be necessary to remain so qualified during the period covered by this Agreement;
 - B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the period covered by this Agreement;
 - C. It is in compliance with all federal, State and local laws, regulations, and ordinances applicable to its business and it is not aware of any actual or threatened actions, claims, suits, orders, or other matters that would prevent or limit its ability to satisfactorily and fully perform its obligations under this Agreement or under any subsequent agreement that it may enter into with the State in connection with its Proposal; and
 - D. It is the correctly named and identified entity that intends to submit the Proposal and it is not controlling, controlled by, or under common control with the entity that intends to submit the Proposal. If the Proposal will be submitted by a joint venture or any other

group of separate business entities, each entity comprising such group has been clearly identified in and has executed this Agreement.

3. Term of Agreement. The term of this Agreement shall commence on the date it is fully signed by both parties and shall continue thereafter until the earlier to occur of: (i) three (3) years following the return of the Confidential Information in accordance with Section 6 of this Agreement; (ii) receipt of written notice given by the State to Offeror terminating this Agreement; or (iii) the date upon which the terms of this Agreement are expressly superseded by the confidentiality provisions of any subsequent agreement which the parties may enter into in connection with the Proposal. If all Confidential Information is not returned to the State in accordance with Section 6 of this Agreement, then this Agreement shall continue in full force and effect until such time as all Confidential Information is returned to the State and the State acknowledges its receipt in writing.

4. What constitutes "Confidential Information". Confidential Information means any and all information provided by or made available by the State to Offeror in connection with the Proposal, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that Offeror views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State for Offeror to prepare and submit its Proposal.

5. Use of Confidential Information. In consideration of the State's allowing Offeror access to the Confidential Information:

A. Offeror hereby agrees to hold the Confidential Information in trust and in strictest confidence, and to take all measures necessary to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

B. Offeror shall not, without the State's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of preparing its Proposal. Offeror shall limit access to Confidential Information to its employees and agents ("Offeror's Personnel") who have a demonstrable need to know such Confidential Information in order to prepare the Proposal and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of Offeror's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute and date Exhibit A next to their name and by doing so agrees to be subject to the terms and conditions of this Agreement to the same extent as Offeror. If Offeror intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the preparation of the Proposal or who will otherwise have a role in performing any aspect of the Proposal, Offeror shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent as it may deem appropriate in its sole and absolute subjective discretion.

6. Return of Confidential Information. Offeror shall return all Confidential Information to the Department within five (5) business days of the State's acceptance of Offeror's Proposal. If Offeror does not submit a Proposal, Offeror shall return the Confidential Information to the Department within 30 days of receiving the material. All Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of Offeror authorized to bind the Offeror.
7. Liability for Confidential Information. Offeror acknowledges that any failure by Offeror or Offeror's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, Offeror and each of Offeror's Personnel agree that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Offeror and each of Offeror's Personnel consent to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages from Offeror and/or each of Offeror's Personnel, as applicable, for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by Offeror or any of Offeror's Personnel to comply with the requirements of this Agreement, Offeror and such Offeror's Personnel shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
8. Unauthorized Use. Offeror shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of Confidential Information by any of Offeror's Personnel or Offeror's former Personnel. Offeror shall, at Offeror's expense, cooperate with the State in seeking injunctive or other equitable relief against any such person.
9. Governing law. This Agreement shall be governed by the laws of the State of Maryland.
10. False and fraudulent statements. Offeror acknowledges that pursuant to Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or imprisonment not exceeding 5 years or both. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.
11. Signing authority for Offeror. The individual signing below on behalf of Offeror warrants and represents that s/he is fully authorized to bind Offeror to the terms and conditions specified in this Agreement. The individual signing below acknowledges that a breach of this warranty and representation may result in personal liability.
12. Other obligations. The parties further agree that, unless otherwise agreed in writing:
(a) this Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or

modified except by a written instrument signed by both parties; (b) the State may waive any rights under this Agreement only by written waiver duly signed by the State, and no failure by the State to exercise or delay in exercising a right under this Agreement shall constitute a waiver of such right; (c) the rights and obligations of Offeror may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State; (d) the State makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (e) the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (f) all notices under this Agreement must be in writing and shall be deemed to have been delivered to and received by a party, and will otherwise become effective, on the date of actual delivery thereof (by personal delivery, express delivery service or certified mail) to the Notice Address of such party set forth below; and (g) signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures.

14. Notices. All notices hereunder shall be in writing and either delivered personally, by express delivery, or sent by certified or registered mail, postage prepaid as follows:

If to the State:
Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
Attention: __Robert Howatt__

If to the Offeror: _____

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

STATE OF MARYLAND

OFFEROR

By: MARYLAND ENERGY
ADMINISTRATION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

**LIST OF OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS
TO THE CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXHIBIT B

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that:
(i) all Confidential Information which is the subject matter of that certain Agreement by and between the State of Maryland and _____ (“Offeror”) dated _____, 200__ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Offeror to this affirmation.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF OFFEROR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT H – Conflict of Interest Affidavit/Disclosure

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, Offeror, Contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The bidder or Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The bidder or Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

Attachment I – Living Wage Requirements for Service Contracts

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
 - (1) A Contractor who:
 - (A) has a State contract for services valued at less than \$100,000, or
 - (B) employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (A) performs work on a State contract for services valued at less than \$100,000,
 - (B) employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (C) performs work for a contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (A) services with a Public Service Company;
 - (B) services with a nonprofit organization;
 - (C) services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (D) services between a Unit and a County or Baltimore City.

- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent contractor or assign work to employees to avoid the imposition of any of the requirements of Title 18, State Finance and Procurement, Annotated Code of Maryland.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the

Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

- J. Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

Attachment-J Affidavit, Maryland Living Wage Requirement

Affidavit of Agreement

Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt form the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt form Maryland's Living Wage Law for the following reasons (check all that apply):

- _____ Bidder/Offeror is a nonprofit organization
- _____ Bidder/Offeror is a public service company
- _____ Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- _____ Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living rate in effect at the time service is provided for hours spend on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts

B. _____ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- _____ All employee(s) proposed to work on the contract will spend less than one-half of the employee's time during every work week on the State contract;
- _____ All employee(s) proposed to work on the contract will be 17 years of age or younger during the duration of the contract; or
- _____ All employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized
Representative: _____

Signature of Authorized Representative

Date

Title

Witness Name (Typed or Printed)

Witness Signature

Date